

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FERNANDO GASTELUM,  
Plaintiff,  
v.  
NIHAL, LLC,  
Defendant.

Case No. 2:23-cv-0577-KJM-JDP (PS)

FINDINGS AND RECOMMENDATIONS

Plaintiff, proceeding pro se, brings this action under the Americans with Disabilities Act (“ADA”) and alleges that defendant’s hotel is non-compliant in four respects. Both parties have filed motions for summary judgment, ECF Nos. 16 & 20, and oppositions, ECF Nos. 22 & 26. I find that defendant’s motion for summary judgment should be granted and plaintiff’s denied.

**Legal Standards**

Summary judgment is appropriate where there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Washington Mutual Inc. v. United States*, 636 F.3d 1207, 1216 (9th Cir. 2011). An issue of fact is genuine only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party, while a fact is material if it “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Wool v. Tandem Computers, Inc.*, 818 F.2d 1422, 1436 (9th Cir. 1987).

1        Rule 56 allows a court to grant summary adjudication, also known as partial summary  
2 judgment, when there is no genuine issue of material fact as to a claim or a portion of that claim.  
3        *See Fed. R. Civ. P. 56(a); Lies v. Farrell Lines, Inc.*, 641 F.2d 765, 769 n.3 (9th Cir. 1981) (“Rule  
4 56 authorizes a summary adjudication that will often fall short of a final determination, even of a  
5 single claim . . . .”) (internal quotation marks and citation omitted). The standards that apply on a  
6 motion for summary judgment and a motion for summary adjudication are the same. *See Fed. R.*  
7 *Civ. P. 56 (a), (c); Mora v. Chem-Tronics*, 16 F. Supp. 2d 1192, 1200 (S.D. Cal. 1998).

8        Each party’s position must be supported by (1) citations to particular portions of materials  
9 in the record, including but not limited to depositions, documents, declarations, or discovery; or  
10 (2) argument showing that the materials cited do not establish the presence or absence of a  
11 genuine factual dispute or that the opposing party cannot produce admissible evidence to support  
12 its position. *See Fed. R. Civ. P. 56(c)(1)* (quotation marks omitted). The court may consider  
13 other materials in the record not cited to by the parties, but it is not required to do so. *See Fed. R.*  
14 *Civ. P. 56(c)(3); Carmen v. San Francisco Unified School Dist.*, 237 F.3d 1026, 1031 (9th Cir.  
15 2001); *see also Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1017 (9th Cir. 2010).

16        “The moving party initially bears the burden of proving the absence of a genuine issue of  
17 material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To meet its burden, “the  
18 moving party must either produce evidence negating an essential element of the nonmoving  
19 party’s claim or defense or show that the nonmoving party does not have enough evidence of an  
20 essential element to carry its ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins.*  
21 *Co., Ltd. v. Fritz Cos., Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000). If the moving party meets this  
22 initial burden, the burden then shifts to the non-moving party “to designate specific facts  
23 demonstrating the existence of genuine issues for trial.” *In re Oracle Corp. Sec. Litig.*, 627 F.3d  
24 376, 387 (citing *Celotex Corp.*, 477 U.S. at 323). The non-moving party must “show more than  
25 the mere existence of a scintilla of evidence.” *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477  
26 U.S. 242, 252 (1986)). However, the non-moving party is not required to establish a material  
27 issue of fact conclusively in its favor; it is sufficient that “the claimed factual dispute be shown to  
28 require a jury or judge to resolve the parties’ differing versions of the truth at trial.” *T.W.*

*Electrical Serv., Inc. v. Pacific Elec. Contractors Assoc.*, 809 F.2d 626, 630 (9th Cir. 1987).

The court must apply standards consistent with Rule 56 to determine whether the moving party has demonstrated there to be no genuine issue of material fact and that judgment is appropriate as a matter of law. *See Henry v. Gill Indus., Inc.*, 983 F.2d 943, 950 (9th Cir. 1993). “[A] court ruling on a motion for summary judgment may not engage in credibility determinations or the weighing of evidence.” *Manley v. Rowley*, 847 F.3d 705, 711 (9th Cir. 2017) (citation omitted). The evidence must be viewed “in the light most favorable to the nonmoving party” and “all justifiable inferences” must be drawn in favor of the nonmoving party. *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 772 (9th Cir. 2002); *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).

## Background

Defendant owns and operates a Holiday Inn Express hotel in Sacramento. ECF No. 1 at 1-2. Plaintiff, who uses a wheelchair for mobility, lodged at the hotel in May 2022. *Id.* He claims that the hotel is non-compliant with the ADA insofar as it: (1) has a passenger loading zone that does not include a marked access aisle; (2) the check-in service counter does not have a thirty-six-inch lowered section, making it difficult for wheelchair bound individuals to access; (3) the hotel room door requires twisting of the wrist and more than five pounds of force to operate; and (4) the clothing iron, hair dryer, and microwave were out of reaching range (forty-eight inches). *Id.* at 2-3. Plaintiff also alleges that these failures violate California's Unruh Act and Disabled Person's Act. *Id.* at 4-5. Both parties have moved for summary judgment.

## Analysis

Plaintiff's federal claims arise under Title III of the ADA. "To prevail on a discrimination claim under Title III, a plaintiff must show that: (1) he is disabled within the meaning of the ADA; (2) the defendant is a private entity that owns, leases, or operates a place of public accommodation; and (3) the plaintiff was denied public accommodations by the defendant because of his disability." *Arizona ex rel. Goddard v. Harkins Amusement Enters., Inc.*, 603 F.3d 666, 670 (9th Cir. 2010). Additionally, "[t]o succeed on an ADA claim of discrimination on account of one's disability due to an architectural barrier, the plaintiff must also prove that: (1)

1 the existing facility at the defendant's place of business [or property] presents an architectural  
2 barrier prohibited under the ADA and (2) the removal of the barrier is readily achievable." *Parr*  
3 *v. L & L Drive-Inn Rest.*, 96 F. Supp. 2d 1065, 1085 (D. Haw. 2000). The parties do not dispute  
4 that plaintiff is disabled or that the hotel is a place of public accommodation. The only issue is  
5 whether plaintiff was denied accommodation because of his disability.

6       A. Passenger Loading Zone

7 Plaintiff alleges that "the hotel has a passenger loading zone, but [it] did not provide a  
8 marked access isle (sic) to discourage parking in it. This condition makes it more difficult for  
9 [him] to use [it]." ECF No. 1 at 2. Defendant raises two arguments as to this issue: (1) there is no  
10 legal requirement that the hotel maintain a passenger loading zone, and (2) it did not have one.  
11 ECF No. 20-1 at 5-7. It's first argument carries the day. *See Brooke v. Sapphire Invs. LLC*, CV  
12 22-4692-GW-RAOx, 2023 U.S. Dist. LEXIS 102221, \*8 (C.D. Cal. May 30, 2023) (noting that  
13 hotels are not one of the three enumerated businesses required to have a passenger loading zone  
14 under the guidelines). Where an entity voluntarily provides a passenger loading zone, that zone  
15 must be ADA compliant. *See Brooke v. Mikado 1311 LLC*, CV 23-6244 PA (SKx), 2024 U.S.  
16 Dist. LEXIS 110055, \*5-6 (C.D. Cal. Jun. 20, 2024). But here, the evidence establishes that there  
17 was no intention of providing such an amenity. Defendant's expert, a Certified Access Specialist  
18 ("CAS"), attests that there were no markings at the hotel indicating that the area in question was a  
19 passenger loading zone, and he did not find any other evidence that such a zone was being  
20 voluntarily provided. ECF No. 20-2 at 3-4.

21 Plaintiff's opposition (1) argues that defendant's CAS refers to the area as a "Porte  
22 Cochere" and (2) cites a dictionary to show that this term commonly refers to a roofed area  
23 sheltering individuals getting in and out of vehicles or, in his telling, a passenger loading zone.  
24 ECF No. 22 at 4-5. I find this argument unconvincing. A dictionary definition has little bearing  
25 on whether this particular area, at this particular hotel, was voluntarily offered as a passenger  
26 loading zone. Certainly it is insufficient to create a genuine factual dispute in light of the  
27 declaration of an expert who attests that he sees no indication of such use. *See F.T.C. v. Publ'g*  
28 *Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997) ("A conclusory, self-serving affidavit,

1 lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of  
2 material fact.”). Other courts have dismissed arguments similar to the one plaintiff now raises.  
3 *See Sapphire Invs. LLC*, 2023 U.S. Dist. LEXIS 102221 at \*12 (“Even assuming arguendo that a  
4 porte cochere and specialized flooring are design features of some passenger loading zones, as  
5 Plaintiff contends (without any evidentiary support), the mere presence of these features does not  
6 establish that the Hotel’s covered area is a passenger loading zone.”). And plaintiff’s complaint  
7 and declaration do not provide any basis for his conclusion that the area is a passenger loading  
8 zone; both simply state as much without elaboration or detail. ECF No. 1 at 2; ECF No. 22-1 at  
9 3. “Just because Plaintiff deems the covered area to be a passenger loading zone, does not mean  
10 that Defendant *intended* to provide one, especially since Plaintiff concedes that there are no  
11 markings or signage indicating otherwise.” *Sapphire Invs.*, 2023 U.S. Dist. LEXIS 102221 at  
12 \*13.

13       B. Hotel Check-In Counter

14 Plaintiff alleges that the hotel check-in counter is not ADA compliant because it did not  
15 have a lowered, thirty-six-inch section, was cluttered, and did not have an accessible forward or  
16 parallel approach. ECF No. 1 at 2. Defendant argues that the counter in question is compliant  
17 with 2010 Americans with Disabilities Act Guidelines (“ADAAG”) § 904.4.1<sup>1</sup> insofar as it “has a  
18 36 [inch] long section that is not cluttered or obstructed” and a “clear parallel approach.” ECF  
19 No. 20-1 at 7. In his opposition, plaintiff argues that defendant’s CAS’s evaluation is based on a  
20 different counter from that at issue in his complaint. ECF No. 22 at 3. Defendant explains that  
21 the counter is different because the hotel underwent a remodel in 2022, and, thus, even if the old  
22 counter was non-compliant, that claim is moot. ECF No. 23 at 6-7. Plaintiff has not rebutted the  
23 findings of defendant’s expert that the counter, as it stands today, is ADA compliant. Thus, his  
24 Title III claims are moot insofar as they seek only injunctive relief. *See Oliver v. Ralphs Grocery*  
25 *Co.*, 654 F.3d 903, 905 (9th Cir. 2011) (“Because a private plaintiff can sue only for injunctive

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<sup>1</sup> This provision mandates that: “A portion of the counter surface that is 36 inches (915  
27 mm) long minimum and 36 inches (915 mm) high maximum above the finish floor shall be  
28 provided. A clear floor or ground space complying with 305 shall be positioned for a parallel  
approach adjacent to the 36 inch (915 mm) minimum length of counter.”

1 relief (i.e., for removal of the barrier) under the ADA, a defendant’s voluntary removal of alleged  
2 barriers prior to trial can have the effect of mootng a plaintiff’s ADA claim.”) (internal citation  
3 omitted). Defendant is entitled to summary judgment on this claim. Critically, given the  
4 replacement of the old counter, there is no realistic possibility that the problems with the old  
5 counter could recur.

6 I also find it inappropriate to resolve any state law claim that may be predicated on this  
7 architectural barrier. That claim, as well as plaintiff’s other state law claims, should instead be  
8 dismissed because there is no reason to retain supplemental jurisdiction. It makes little sense for  
9 this court to retain jurisdiction over state law claims that look to past harms, like those under the  
10 Unruh Act. *See Garcia v. Dudum*, No. 21-cv-05081-SI, 2022 U.S. Dist. LEXIS 58741, \*11-14  
11 (N.D. Cal. Mar. 30, 2022) (declining to retain supplemental jurisdiction over Unruh Act claims  
12 where ADA claim was mooted by remediation); *see also Carnegie-Mellon Univ. v. Cohill*, 484  
13 U.S. 343, 350 n.7 (1988) (“[I]n the usual case in which all federal-law claims are eliminated  
14 before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—  
15 judicial economy, convenience, fairness, and comity—will point toward declining to exercise  
16 jurisdiction over the remaining state-law claims.”); *United Mine Workers of Am. v. Gibbs*, 383  
17 U.S. 715, 726 (1966) (“Needless decisions of state law should be avoided both as a matter of  
18 comity and to promote justice between the parties, by procuring for them a surer-footed reading  
19 of the applicable law.”).

20 **C. Door Pressure**

21 Defendant is entitled to summary judgment on plaintiff’s claim that the door pressure  
22 exceeded five pounds and required twisting of the wrist. As it correctly argues, fire doors, like  
23 that at issue, are covered by “appropriate administrative authority” and, in California, may have a  
24 greater amount of pressure, not to exceed fifteen pounds. *See ADAAG* § 4.13.11(1) (“Fire doors  
25 shall have the minimum opening force allowable by the appropriate administrative authority.”);  
26 California Building Code § 1133B.2.5(1) (“Required fire doors shall have the minimum opening  
27 force allowable by the appropriate administrative authority, not to exceed 15 lbs (66.7N.”).  
28 Defendant’s CAS states that the relevant door required thirteen pounds of force to open. ECF No.

1 20-2 at 5. In his opposition, for the first time, plaintiff declares that the door required more than  
2 fifteen pounds to operate. ECF No. 22-1 at 4. Previously, in his complaint, he alleged only that  
3 the door required more than five pounds. ECF No. 1 at 2-3. He offers no explanation as to how  
4 he now knows that the amount exceeded fifteen pounds or why he did not include that  
5 substantially higher number in his initial complaint. Neither does he state what exact amount of  
6 force he believes was required to open the door. Summary judgment cannot be defeated by  
7 unsupported self-serving declarations. *See Publ'g Clearing House, Inc.*, 104 F.3d at 1171 (“A  
8 conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is  
9 insufficient to create a genuine issue of material fact.”).

10 **D. Hotel Room Appliances**

11 Plaintiff asserts that the positions of the iron, hair dryer, and microwave in his hotel room  
12 exceeded the maximum forty-eight-inch reaching range. ECF No. 1 at 3. Defendant is entitled  
13 to summary judgment on this claim because, as his CAS notes in his declaration, the 1991  
14 Americans with Disabilities Act Accessibility Guidelines (“ADAAG”) applies to the hotel,  
15 because it was constructed in 2008. ECF No. 20-2 at 2. Thus, the relevant reach range was not  
16 forty-eight inches, but fifty-four. *Id.* at 6. Moreover, defendant’s expert testified that his  
17 measurement of the devices came to forty-three inches. *Id.* Plaintiff offers no rebuttal to these  
18 arguments in his opposition, electing instead to focus on whether repositioning of those items  
19 would moot his claims. ECF No. 22 at 5. And his declaration does nothing more than repeat his  
20 assertion that the reach distance is more than forty-eight inches. *Id.* at 5. Plaintiff offers neither  
21 any detail as to how he measured the distance nor a statement of the number of inches at which he  
22 believes the appliances rest. Thus, defendant is entitled to summary judgment on this claim.

23 **Conclusion**

24 Accordingly, it is hereby RECOMMENDED that:

25 1. Defendant’s motion for summary judgment, ECF No. 20, be GRANTED.  
26 2. Judgment be entered in defendant’s favor on plaintiff’s ADA claims.  
27 3. The court decline to exercise supplemental jurisdiction over plaintiff’s state law claims.

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1           4. Plaintiff's state law claims be dismissed without prejudice to plaintiff bringing them, if  
2 he wishes, in state court.

3           5. Plaintiff's motion for summary judgment, ECF No. 16, be DENIED.

4           6. The Clerk of Court be directed to close the case.

5           These findings and recommendations are submitted to the United States District Judge  
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of  
7 service of these findings and recommendations, any party may file written objections with the  
8 court and serve a copy on all parties. Any such document should be captioned "Objections to  
9 Magistrate Judge's Findings and Recommendations," and any response shall be served and filed  
10 within fourteen days of service of the objections. The parties are advised that failure to file  
11 objections within the specified time may waive the right to appeal the District Court's order. *See*  
12 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.  
13 1991).

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15 IT IS SO ORDERED.

16 Dated: July 17, 2025

  
17 JEREMY D. PETERSON  
18 UNITED STATES MAGISTRATE JUDGE

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